IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6443 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

STATE OF GUJARAT

Versus

VASJHRAM M PAGI

Appearance:
MR UMESH TRIVEDI, ld.AGP for Petitioners
MRS DT SHAH for Respondent

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 20/04/2001

ORAL JUDGEMENT

This Special Civil Application filed by the State of Gujarat through the Secretary, Forest and Environment Department, and the Range Forest Officer, Forest Preservation (Forest Department), Lakhtar, Dist. Surendranagar is directed against the order at Annexure.B

passed by the Labour Court, Rajkot, in Reference LCR No.1731/84, i.e. award dated 18th Aug.1986 and the order at Annexure.C passed by the Labour Court, Surendranagar on 13th Dec.1990 whereby the application moved in 1989 without any application for condonation of delay for setting aside the ex-parte award was rejected.

2. In this Special Civil Application, the notice was issued on 11th Sept.1991 and on that very day, ad-interim relief was also granted staying the operation of the award regarding backwages. On 25th Sept.1991, Rule was issued and the ad-interim order was continued. However, on 11th Oct.1991, the following order was passed:

"Coram: S.B.Majmudar & K.R.Vyas, JJ.
October 14, 1991.

Oral Order:

Having heard the learned Advocates for the parties, ad-interim relief granted earlier is vacated for the simple reason that the respondent is reinstated in service pursuant to the award and as far as backwages are concerned, there is an order under Section 33(c)(2) of the Industrial Disputes Act, 1947 which has become final between the parties. The petitioner State of Gujarat is directed to deposit the amount of backwages quantified at Rs.13,900/- plus Rs.100/- i.e. Rs.14,000/- in all in the Labour Court, Surendranagar within four weeks from today. Liberty reserved to the respondent to withdraw the same as and when deposited.

2. Learned counsel for the petitioners, at this stage, submitted that the petitioners are desirous of challenging the 33(c)(2) order. This is neither here nor there. As on date the 33(c)(2) order has become final and is operative. Consequently, ad-interim relief granted earlier has to be vacated and we do so.

3. Mrs.Shah for the respondent states that the respondent had already moved this Court being aggrieved by the inaction on the part of the authorities in not executing the certificate pursuant to 33(c)(2) order.

Sd/-
(S.B.Majmudar,J.)
Sd/-

October 11, 1991. (K.R.Vyas,J.)"

3. An affidavit-in-reply dated 30th Sept.1991 has been filed by the Secretary of Jilla Shramjivi Sangh, Surendranagar wherein the order dt.8.2.91 passed by Division Bench of this Court in Special Civil Application No.483/91 has been referred and it is only thereafter that the present petition was filed on 9.9.91. The contents of this order dt.8.2.91 are reproduced as under:-

"Coram: A.P.Ravani & M.S.Parikh, JJ.
Order Date: 8.2.91.

ORDER:

Rule. Mr.M.H.Rathod waives service of rule on behalf of respondents Nos.1 and 2.

The respondent No.2 is directed to deposit the amount payable to the petitioner pursuant to the order dated 18.8.1986 Annexure "B". The respondent No.2 is further directed to place the said computation on record latest by February, 25, 1991. Respondent No.2 shall also explain by filing affidavit in reply as to why the direction given by the Labour Court in its award dated 18.8.1986 as regards reinstatement in service and amount of back wages, have to far not been complied with. The respondent No.2 is directed to comply with the direction given by the Labour court in its award dated 18.8.96 as regards reinstatement immediately.

Learned counsel appearing for respondent No.2 is requested to inform respondent No.2 about this direction. Respondent No.2 may take note that failure to comply with the direction may be visited consequences in accordance with law.

In case respondent No.2 is not in a position to comply with the aforesaid direction as regards reinstatement in service he shall personally remain present in Court.

Sd/-
A.P.Ravani, J

Sd/-
M.S.Parikh, J
Dt: 8.2.1991"

4. According to the petitioners, the respondent remained in employment of the petitioner no.2 in the years 1981-82, 1982-83, 1983-84, 1984-85 and 1985-86 for 2, 230, 127, 315 and 13 days respectively. The case of the petitioners is that the respondent was not required for a brief period between 1.10.1983 and 5.1.1984 and therefore, he was told not to come for work. The respondent challenged the oral direction of the petitioner no.2 and raised a grievance before the Assistant Labour Commissioner, Surendranagar who referred the dispute to the Labour Court at Rajkot and this dispute came to be registered as Reference LCR No.1731/84. It is also the case of the petitioners that respondent was served with the notice, but the concerned Range Officer did not appear because he was on the verge of retirement and there was heavy workload with him and at the time of his retirement, he had not drawn the attention of the file pertaining to this matter. Therefore, no reply could be filed on behalf of the petitioners before the Labour Court nor any evidence could be led and nobody on behalf of the petitioner no.2 could remain present on the day of hearing of the matter. The Labour Court examined the respondent vide Exh.28 and proceeded against the petitioner no.2 ex-parte and by its order dated 18th Aug.1986, the Labour Court passed the award and directed reinstatement of the respondent with backwages.

5. Although this award was passed on 18th Aug.1986, it appears that the petitioner no.2 moved an application for setting aside the ex-parte award in the year 1989 and that too, without any application for condonation of delay. The Labour Court then decided this Misc. Application No.6/89 on 13th Dec.1990 and rejected the application for setting aside the ex-parte award.

6. I have gone through the award dated 18th Aug.1986 as well as the order dated 13th Dec.1990 whereby the application for setting aside the ex-parte award had been rejected. It is very clear that no case had been made out by the petitioner no.2 for setting aside the ex-parte award and no material was placed on record as to why the application for setting aside the ex-parte award was made as late as in the year 1989 when the award was passed way back on 18th Aug.1986 and no application for condonation of delay had also been moved and this application seeking to set aside the ex-parte award was hopelessly time-barred and the same has been rejected as such. No

details have been mentioned about the date of retirement of concerned Range Officer or the work load and there is no explanation for the period of about three years 1986 to 1989 taken for moving the application for setting aside ex parte award. Under Rule 26A of the Industrial Disputes Rules, 1966, the period of limitation for moving such an application is 30 days from the date of knowledge. The petitioners did not even care to move an application for condonation of delay. This Court finds that it is a case of sound exercise of power and discretion by the Labour Court in rejecting the application for setting aside the ex parte award. This Court, therefore, does not find any infirmity in the order by which the application for setting aside the ex-parte award has been rejected.

7. Learned AGP Mr.Trivedi has cited before me a case i.e. the Chief Conservator of Forests and anr. v. Jagannath Maruti Kondhare and ors., reported in (1996) 2 SCC 293 and a recent decision of the Supreme Court rendered on 31st Jan.2001 in the case of State of Gujarat v. Pratamsinh, Civil Appeal No.1864 of 1998. Learned AGP Mr.Trivedi has submitted that the establishment in which the respondent was working was not an industrial establishment and the respondent cannot be treated as a workman. It may be pointed out that the case of State of Gujarat v. Pratamsinh (supra) was a case arising out of a writ petition which had been directly filed before the High Court whereas in the present case, the matter has come through a proper reference being made to the Labour Court by the Conciliation Officer under the Industrial Disputes Act and therefore, the Supreme Court decision which was a case arising out a writ petition in which the Supreme Court took the view that no evidence had been led and neither any of the duties of the employee nor the functions of the concerned Department had been examined and without examining the duties of the employee and the functions of the establishment, the law laid down in Bangalore Water Supply case was applied and therefore, in the facts of that case, it was held that the High Court had erred in proceeding on the basis that the concerned Department was an industrial establishment. This decision cannot be applied to the facts of the present case for the following reasons:-

(i). The petitioners had not taken any such objection before the Labour Court that the respondent was not a workman and the department could not be treated as Industrial Establishment. Admittedly, the respondent was working as a watchman under petitioner no.2 and the petitioner No.2 is

authority under the petitioner No.1, discharging welfare functions and public duties in a scheme known as Social Forestation Scheme as per the averments made in Para 1 and 2 of the petition itself. Before Labour Court the say of the respondent in the evidence was not contested in any manner. Keeping in view the duties which a watchman is required to discharge in a nursery for implementation of Social Forestation Scheme, it can't be held that the respondent was not a workman or that the establishment in question was not an industrial establishment or that the respondent was not entitled to the protection under Industrial Disputes Act.

(ii) It may also be noted that the order under Section 33(C)(2) of Industrial Disputes Act had also become final between the parties as has been recorded in the order dt. 11.10.1991 passed by the Division Bench as has been reproduced hereinabove and it has not been stated even now before me as to whether the order under Section 33(C)(2) of the Industrial Disputes Act was challenged by the petitioners or not and if challenged to what result.

8. The respondent has remained in employment of the petitioners ever since 1981-82 and as per the petitioners' own case he is still continuing in employment i.e. for a period of 20 years by now and so also, this Court does not find any case for interference under Articles 226 & 227 of the Constitution of India in a writ of certiorari. This Special Civil Application has no force. The same is hereby rejected. Rule is hereby discharged. No order as to costs.

20th April 2001 (M.R. Calla, J.)

Sreeram.